

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10856MEL

HOWARD KAPLAN,

Plaintiff,

v.

WEND MANAGEMENT, INC.,  
WENDY'S OLD FASHIONED  
HAMBURGERS OF NEW YORK,

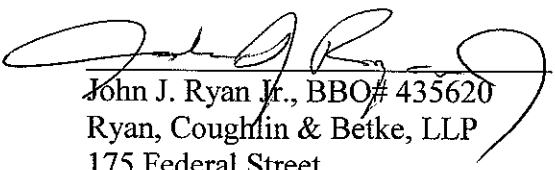
Defendants.

**DEFENDANTS' MOTION TO WITHDRAW THEIR MOTION  
TO DISMISS COUNT II OF PLAINTIFF'S COMPLAINT  
WITHOUT PREJUDICE**

Now come the defendants, Wend Management, Inc. and Wendy's Old Fashioned Hamburgers of New York, who move to withdraw their Motion to Dismiss Count II of Plaintiff's Complaint previously submitted to this Court. Defendants withdraw said motion without prejudice thereby reserving all rights and claims made under the Defendants' original motion as such claims may be asserted at a later time. There is no opposition to Defendants' motion to withdraw.

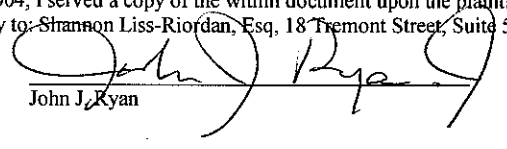
WHEREFORE, the Defendants respectfully request that the Court grant this motion to withdraw their Motion to Dismiss Count II of the Plaintiff's Complaint without prejudice.

Respectfully Submitted,

  
John J. Ryan Jr., BBO# 435620  
Ryan, Coughlin & Betke, LLP  
175 Federal Street  
Boston, Massachusetts 02110  
(617) 988-8050

CERTIFICATE OF SERVICE

I, John J. Ryan, hereby certify that on October 20, 2004, I served a copy of the within document upon the plaintiff by serving his counsel first class mail, postage prepaid and telecopy to: Shannon Liss-Riordan, Esq., 18 Tremont Street, Suite 500, Boston MA, 02108

  
John J. Ryan